

IN THE UNITED STATES BANKRUPTCY COURT

FOR THE

SOUTHERN DISTRICT OF GEORGIA
Augusta Division

IN RE:)	Chapter 13 Case
)	Number <u>91-11626</u>
RONALD WEST, SR.)	
BARBARA ANN WEST)	
)	
Debtors)	
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TRANSAMERICA FINANCIAL SERVICES)	FILED
)	at 11 O'clock & 03 min. P.M.
Movant)	Date: 2-4-92
)	
vs.)	
)	
RONALD WEST, SR.)	
BARBARA ANN WEST)	
)	
Respondents)	

ORDER

Transamerica Financial Services ("Transamerica"), the holder of an allowed secured claim in this Chapter 13 proceeding, objects to confirmation of the debtors' proposed plan. The facts are not at issue. Transamerica is the holder of an allowed secured claim secured solely by an interest in the debtors' homeplace. The debtors' Chapter 13 case was filed September 5, 1991 and the proposed plan now under consideration for confirmation provides relevant to the claim of Transamerica and its objection,

3. As specified in the space below, debtors shall make regular future payments as they become due to creditors (named below) holding a security interest in debtor's residence.

Any claim filed for arrearage on such obligation shall be paid by distributions from the Chapter 13 Trustee. Real Estate Financing; and Transamerica Fin. . . . Debtors shall make direct payments to Transamerica Fin. commencing with the installment payment due October 10, 1991.

A payment came due under the Transamerica obligation on September 9, 1991, post petition. The debtors are current in their post petition payments to Transamerica for payments due October, 1991 through confirmation hearing held January 23, 1992.

Transamerica contends the debtors' proposed plan violates the provisions of 11 U.S.C. §1322(b)(2) by attempting to modify the rights of a holder of a secured claim, secured solely by an interest in the debtors' principal residence and therefore the plan fails to comply with the provisions of Chapter 13 preventing confirmation. See 11 U.S.C. §1325(a)(1). Transamerica is correct. Bankruptcy Code §1322(b)(2) provides that a Chapter 13 plan may

(2) modify the rights of holders of secured claims, other than a claim secured only by a security interest in real property that is the debtor's principal residence, or of holders of unsecured claims, or leave unaffected the rights of holders of any class of claims; . . .

(emphasis added)

Bankruptcy Code §1322(b)(5) provides that

(5) notwithstanding paragraph (2) of this subsection [see, 1322(b)(2) above], provide for the curing of any default within a reasonable time and maintenance of payments while the case is pending on any unsecured claim or secured claim on which the last payment is due after the date on which the final payment under the plan is due;

(emphasis added).

"The plain meaning of legislation should be conclusive, except in the 'rare cases [in which] the literal application of the statute will produce a result demonstrably at odds with the intention of its drafters.'" United States v. Ron Pair Enterprises, Inc., 489 U.S. 235, 242, 109 S.Ct. 1026, 1031, 103 L.Ed.2d 290 (1989) quoting Griffin v. Oceanic Contractors, Inc., 458 U.S. 564, 571, 102 S.Ct. 3245, 3250, 73 L.Ed.2d 973 (1982)]. Section 1322(b)(2) and (5) prohibit modification of the rights of the holder of an allowed secured claim secured solely by an interest in the debtor's homeplace, which rights include the right to receive regular monthly payments in accordance with the promissory note and security instrument evidencing the debt, but authorize a plan to cure any default on the obligation secured by the debtor's homeplace within a reasonable time while maintaining payments while the case is pending. The curing of the default, when read in conjunction with the balance of subparagraph (5), requiring the maintenance of payments while the case is pending, clearly limits the curing of a default to a prepetition default. The plain language of the statute requires the maintenance of payments while the case is pending. The case was pending on September 9, 1991 when the first post petition plan payment became due. Therefore, in order to comply with the provisions of §1322(b)(2) and (5), and in order to confirm the case under §1325(a)(1), the debtor must meet the post petition payments due Transamerica in accordance with the note and security instruments establishing Transamerica's claim.

See In re: Seidel 752 F.2d 1382 (9th Cir. 1985); In re: Hollis, 105 B.R. 1003 (N.D. Ala. 1989); In re: Parker, 46 B.R. 106 (Bankr. N.D. Ga. 1985). See also In re: Gavia, 24 B.R. 573 (9th Cir. BAP 1982). Contra In re: Stafford, 123 B.R. 415 (N.D. Ala. 1991); In re: Davis, 110 B.R. 834 (Bankr. W.D. Tenn. 1989); In re: Minick, 63 B.R. 440 (Bankr. D.C. 1986); In re: Canipe, 20 B.R. 81 (Bankr. W.D. N.C. 1982); In re: Simkins, 16 B.R. 956 (Bankr. E.D. Tenn. 1982); 5 Collier on Bankruptcy, ¶1322.09[1] (L. King 15th Ed. 1991).

Following announcement of my decision sustaining the objection, the debtors requested leave to immediately modify the plan to provide for payment of the September, 1991 installment due Transamerica directly.

It is therefore ORDERED that the debtors' Chapter 13 plan as modified is confirmed. The debtors shall cure the post petition arrearage representing the September, 1991 payment at the rate of Sixty-Seven and 75/100 (\$67.75) Dollars per month paid in conjunction with the regular monthly payment beginning February 9, 1992.

JOHN S. DALIS
UNITED STATES BANKRUPTCY JUDGE

Dated at Augusta, Georgia
this 3rd day of February, 1992.